

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

STATE OF TEXAS,)
GUN OWNERS OF AMERICA, INC.,)
GUN OWNERS FOUNDATION, and)
BRADY BROWN,)
Plaintiffs,) Case No. 6:23-cv-00013
v.)
BUREAU OF ALCOHOL, TOBACCO,)
FIREARMS AND EXPLOSIVES, UNITED)
STATES DEPARTMENT OF JUSTICE, and)
STEVEN M. DETTELBACH in his official)
capacity AS THE DIRECTOR OF ATF,)
Defendants.)

JOINT STATUS REPORT

The parties respectfully submit this joint status report pursuant to the Court's order of July 31, 2023, ECF No. 65. That order stayed proceedings in this matter "pending the Fifth Circuit's resolution of the expedited appeal in *Mock v. Garland*," No. 23-10319 (5th Cir.), and instructed the parties to submit a status report within seven days of "the Fifth Circuit's decision" in that appeal. *Id.* at 3.

On August 1, 2023, a panel of the Fifth Circuit issued a decision in *Mock*. The panel reversed the district court's order denying the plaintiffs' motion for a preliminary injunction for failure to demonstrate a likelihood of success on the merits, and remanded for the district court to determine in the first instance whether the plaintiffs are entitled to preliminary relief. *Mock v. Garland*, --- F.4th ---, 2023 WL 4882763, at *20. Each party in

Mock has until September 15, 2023, to file a petition for rehearing or rehearing en banc. *See* Fed. R. App. P. 40(a)(1). In the event neither party seeks rehearing of the panel's decision, the government expects that the Fifth Circuit's mandate will issue on September 22, 2023, unless a party moves to stay the mandate pending a petition for a writ of certiorari. *See* Fed. R. App. P. 41(b), (d); *see also* Fed. R. App. P. 26(a)(1)(c). Until that mandate issues, this Court's preliminary injunction will remain in effect, and Defendants will remain precluded from enforcing the Rule against Plaintiffs. Order at 7, ECF No. 51 ("The preliminary injunction will remain in effect pending resolution of the expedited appeal in *Mock v. Garland*."))

Plaintiffs' Statement

The Court granted Defendants' Motion to Stay Proceedings (ECF 58) pending the Fifth Circuit's resolution of the expedited appeal in *Mock v. Garland*, No. 23-10319. ECF 65. The Court ordered the parties to file a status report within seven days of the Fifth Circuit's decision in *Mock. Id.*

The Fifth Circuit issued its decision on August 1, ordering:

For the foregoing reasons, we REVERSE the order denying a preliminary injunction and REMAND with instruction to consider that motion expeditiously. To ensure relative stability, we MAINTAIN the preliminary injunction pending appeal that the motions panel issued on May 23, 2023, as clarified by this merits panel on May 26, 2023. This court's injunction will expire 60 days from the date of this decision, or once the district court rules on a preliminary injunction, whichever occurs first. We direct the district court to rule within 60 days.

Mock v. Garland, No. 23-10319, 2023 WL 4882763, at *20 (5th Cir. Aug. 1, 2023).

Consequently, the Plaintiffs request that the Court lift the stay, and object to continuing the stay. If the Court lists the stay, Defendants' deadline to respond to Plaintiffs' complaint is two weeks after the stay is lifted. ECF 60. Further, should the Court lift the stay, Plaintiffs anticipate filing their Motion for Summary Judgment on or before September 8, 2023.

Defendants' Statement

This Court should keep proceedings stayed in this matter “pending the Fifth Circuit’s *resolution* of the expedited appeal in *Mock*,” as its stay order provides. *See Order at 3, ECF No. 65* (emphasis added). The United States is assessing how to best proceed in light of the *Mock* decision, including whether to seek further appellate review, which would “certainly affect . . . the disposition of some of the issues in this case.” *See id.* Additionally, because the government does not expect that the Fifth Circuit’s mandate in *Mock* will issue before September 22, 2023, and because this Court’s preliminary injunction will remain in effect until that mandate issues, *see Order at 7, ECF No. 51*, there is no need for the Court to take any action at this time.

Dated August 8, 2023.

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Respectfully submitted.

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CERTIFICATE OF SERVICE

I certify that on August 8, 2023, I filed this motion through the Court's CM/ECF system, which automatically served it upon all counsel of record.

/s/ Charles K. Eldred